

UNITED STATES OF AMERICA,)
)
 V.) 5:10-HC-2022-BO
)
 CARLOS OFARRIT-FIGUEROA,)
)
 RESPONDENT.)
 _____)

1 NOVEMBER 23, 2010

2 MS. LITTLE: GOOD MORNING. THIS IS MR. BAYZLE.

3 MR. BAYZLE: I'M SCOTT BAYZLE. MR. BUTLER IS
4 ALSO HERE AS WELL.

5 MS. LITTLE: WE WERE DISCUSSING WITH THE
6 INTERPRETER. I'M NOT SURE IF OUR CLIENT WANTS TO HAVE
7 EVERYTHING INTERPRETED OR JUST IF HE HAS QUESTIONS.

8 THE COURT: WE'LL SWEAR THE INTERPRETER AND MAKE
9 DO.

10 (INTERPRETER SWORN.)

11 MR. ACKER, ON ANOTHER POINT, IN AN APPEAL, WHAT'S THE
12 PROCEDURE IF YOU PREVAIL? CAN YOU APPEAL FROM A CASE THAT
13 YOU WON, OR IS THAT --

14 MR. ACKER: I WOULDN'T THINK SO, YOUR HONOR. I
15 THINK THE OTHER SIDE WOULD APPEAL.

16 THE COURT: I'M NOT TRYING TO BE CLEVER WITH YOU
17 AT ALL, BUT TO THE EXTENT THAT YOU WON, IN *BRONCHEAU* AND
18 THE STATUTE WAS HELD TO BE CONSTITUTIONAL, AREN'T THERE --
19 I MEAN, HOW BROAD A PLAYING FIELD DO YOU HAVE TO APPEAL?

20 (RESPONDENT ENTERS INTO THE COURTROOM.)

21 IS IT THAT YOU DIDN'T GET THE OUTCOME THAT YOU
22 SPECIFICALLY WANTED BUT YOU GOT A FAVORABLE OUTCOME?

23 IT'S LIKE THE GUY IN THE SLIP AND FALL CASE WHO
24 WANTED \$1 MILLION AND THE JURY GAVE HIM 50,000 AND HE
25 SAID, WHERE'S MY OTHER \$950,000? I'M GOING TO TAKE THIS

1 AS HIGH AS I CAN. THEY SAID, YOU KNOW, WE'RE SORRY BUT
2 THE 50 WILL HAVE TO DO.

3 **MR. ACKER:** I WOULD ENVISION, YOUR HONOR, THERE
4 COULD BE LOTS OF DIFFERENT OUTCOMES IN *BRONCHEAU* AND WE
5 JUST HAVE TO SEE ON WHAT BASIS THE 4TH CIRCUIT RULED. IF
6 THEY RULED YOUR ORDER WAS INAPPROPRIATE, THEY WOULD
7 ARTICULATE WHY AND THEN, I WOULD IMAGINE, THEY WOULD
8 REMAND IT AND WE WOULD BE BACK BEFORE YOUR HONOR TO HANDLE
9 IT BASED ON THEIR RATIONALE.

10 **THE COURT:** WHAT HAPPENS IF IN ONE OF THESE
11 2255'S, LIKE THE GENTLEMAN WHO IS NOT HERE, IF THE JUDGE
12 DOES SOMETHING IN THE CRIMINAL CASE, AND I KNOW THIS IS
13 HYPOTHETICAL AND AN ADVISORY KIND OF QUESTION, BUT SUPPOSE
14 THE JUDGE DOES SOMETHING TO VACATE THE CRIMINAL SENTENCE
15 BUT YOU STILL HAVE THE PERSON NOW CIVILLY. WOULD YOU KEEP
16 HIM?

17 **MR. ACKER:** I THOUGHT ABOUT THAT QUESTION, YOUR
18 HONOR. I HAVEN'T RESEARCHED THAT QUESTION TO FIND OUR
19 POSITION ON THAT.

20 **THE COURT:** YOU COULD HAVE A CLAIM WITHOUT AN
21 ANTECEDENT SENTENCE.

22 **MR. ACKER:** WELL, IT'S MY UNDERSTANDING IN THAT
23 CASE THAT THE DEFENDANT IN THAT CASE ARGUED THAT HE WOULD
24 NOT HAVE PLED GUILTY. SO I PRESUME HIS REMEDY IN THE
25 2255 --

1 **THE COURT:** VACATE THE PLEA.

2 **MR. ACKER:** VACATE THE PLEA, AND IT WOULD GO TO
3 TRIAL. THEN WE WOULD GO FROM THERE. BUT THERE ARE A LOT
4 OF UNANSWERED QUESTIONS ON THOSE KIND OF PERMUTATIONS.

5 **THE COURT:** WHAT ABOUT PEOPLE WHO ARE
6 CERTIFIED -- THEY'RE INDICTED AND ARRESTED AND DETAINED
7 AND THEN YOU COME IN FRONT OF ME WITH SOME GROUNDS, EITHER
8 SIDE, AND I SEND THEM TO BUTNER FOR 90 DAYS OR 120 DAYS.
9 ARE THEY IN THE CUSTODY OF THE BUREAU OF PRISONS OR THE
10 ATTORNEY GENERAL?

11 **MR. ACKER:** YES, YOUR HONOR. THE STATUTE
12 SPECIFICALLY SAYS THAT PEOPLE -- WELL, IF THEY HAVE BEEN
13 CERTIFIED.

14 **THE COURT:** COULD THEY BE CERTIFIED OUT OF THAT
15 COMMITMENT? LIKE I COMMIT THEM TO THE BOP FOR SUCH AND
16 SUCH STUDY AND THEN, FOR REASONS THAT WE DON'T KNOW, THE
17 UNDERLYING CASE RESOLVES AND THEY'RE NOT GOING TO BE
18 SENTENCED TO CUSTODY OR PRISON. BUT BECAUSE OF WHO THEY
19 ARE, THEY GET A 4248 CERTIFICATION BEFORE THEY GET OUT.
20 COULD THAT HAPPEN?

21 **MR. ACKER:** YOUR HONOR, I CAN ANSWER THAT IN
22 PART. IF THE COURT HAS MADE A DETERMINATION THAT THEY ARE
23 INCOMPETENT TO STAND TRIAL, BECAUSE UNDER 4241, THEN THE
24 STATUTE DOES ALLOW, IN THAT INSTANCE, FOR THEM TO BE THEN
25 CERTIFIED UNDER 4248.

1 **THE COURT:** WELL, THEY WOULD BE CERTIFIED FIRST
2 UNDER 4246 PROBABLY, IF THEY WERE INCOMPETENT TO STAND
3 TRIAL.

4 **MR. ACKER:** OR UNDER 4241, I BELIEVE. BUT IN
5 THAT INSTANCE THEY COULD BE CERTIFIED, AND THE STATUTE IS
6 VERY SPECIFIC ABOUT THAT. IF YOU ARE ASKING A DIFFERENT
7 QUESTION, AND THAT IS WHETHER SIMPLY WHEN THEY ARE SENT
8 FOR THE EVALUATION.

9 **THE COURT:** SUPPOSE THEY ARE NOT FOUND TO BE
10 INCOMPETENT. SUPPOSE THEY ARE FOUND TO BE COMPETENT
11 VIS-A-VIS UNDERSTANDING THE NATURE AND EXTENT OF THE
12 CHARGES AGAINST THEM AND COMPETENT IN TERMS OF RESPONDING
13 TO CRIMINAL PROCESS AND THE TRIAL BUT SEXUALLY DANGEROUS
14 AND SUFFERING FROM A SERIOUS MENTAL DISORDER. COULD THEY
15 BE CIVILLY COMMITTED THEN?

16 **MR. ACKER:** I DON'T KNOW THE ANSWER TO THAT
17 QUESTION, YOUR HONOR.

18 **THE COURT:** BUT THAT COULD HAPPEN.

19 **MR. ACKER:** I DON'T KNOW.

20 **THE COURT:** OR THAT CIRCUMSTANCE COULD.

21 **MR. ACKER:** CIRCUMSTANCES COULD HAPPEN, ALTHOUGH
22 I WOULD THINK THE NORMAL COURSE WOULD BE IF HE'S COMPETENT
23 TO STAND TRIAL HE WOULD STAND TRIAL, AND EITHER HE WOULD
24 GET A SENTENCE OR NOT GET A SENTENCE. THAT WOULD BE THE
25 MORE NORMAL COURSE BUT I HAVEN'T RESEARCHED THE ISSUE ON

1 THE SPECIFIC QUESTIONS YOU ASKED.

2 **THE COURT:** THANK YOU.

3 HOW DO YOU PRONOUNCE IT?

4 **MS. LITTLE:** OFARRIT.

5 **THE COURT:** DID MR. OFARRIT'S 2001 CONVICTION
6 COME FROM AN INTERNAL BOP CRIME?

7 **MS. LITTLE:** YES, YOUR HONOR, IT DID.

8 **THE COURT:** SO WHERE WAS HE -- WHERE WAS THE
9 CRIME COMMITTED?

10 **MS. LITTLE:** I'M NOT SURE.

11 **MR. BAYZLE:** YOUR HONOR, IT WAS IN TERRE HAUTE,
12 INDIANA.

13 **THE COURT:** AT THAT PENITENTIARY.

14 **MR. BAYZLE:** HE WAS BEING HELD FOR IMMIGRATION
15 REASONS AT THAT TIME.

16 **THE COURT:** HE WAS HELD THERE ON IMMIGRATION AT
17 THE TERRE HAUTE PRISON. I DON'T KNOW THE PRONUNCIATION
18 BUT I KNOW IT'S A MAJOR PRISON.

19 **MR. BAYZLE:** YES, YOUR HONOR.

20 **THE COURT:** HE COMMITTED A PREDATORY CRIME
21 THERE, WHICH HE EITHER PLED GUILTY TO OR WAS CONVICTED OF,
22 RIGHT?

23 **MS. LITTLE:** HE WENT TO TRIAL, YOUR HONOR.

24 **THE COURT:** AND HE WAS CONVICTED OF THAT.

25 **MS. LITTLE:** HE WAS CONVICTED.

1 **THE COURT:** AND SENTENCED TO 120-MONTHS AND
2 THREE YEARS OF SUPERVISED RELEASE.

3 **MS. LITTLE:** THAT'S CORRECT.

4 **THE COURT:** AND SO WHEN -- HE WAS DUE TO BE
5 RELEASED FROM HIS SENTENCE ON FEBRUARY 16 AND WAS
6 CERTIFIED SHORTLY BEFORE THAT?

7 **MS. LITTLE:** THAT'S CORRECT. HE WAS CERTIFIED
8 ON FEBRUARY 12 OF 2010.

9 **THE COURT:** DID HE HAVE AN IMMIGRATION DETAINER
10 AGAINST HIM?

11 **MS. LITTLE:** YES, HE DOES.

12 **THE COURT:** TO WHAT COUNTRY?

13 **MS. LITTLE:** HE CAME OVER ON PART OF THE MARIEL
14 BOATLIFT.

15 **THE COURT:** TO CUBA?

16 **MS. LITTLE:** YES, WHICH WE DON'T DEPORT PEOPLE
17 TO CUBA.

18 **THE COURT:** SO HE HAS AN ASYLUM STATUS?

19 **MS. LITTLE:** I DON'T KNOW ABOUT THE ASYLUM
20 STATUS. WE SPOKE WITH IMMIGRATION. THEY INDICATED WHEN
21 HE IS RELEASED HE WILL GO INTO ICE CUSTODY AND HE WILL BE
22 HELD THERE UNTIL THERE'S A DETERMINATION MADE AS TO --

23 **THE COURT:** BECAUSE HE'S NOT GOING TO BE
24 TRANSITIONED INTO THE AMERICAN POPULATION.

25 **MS. LITTLE:** HE COULD BE. ICE ACTUALLY HAS

1 PEOPLE THAT SUPERVISE INDIVIDUALS FOR LIFE, AND HE WOULD
2 BE SUBJECT TO LIFETIME SUPERVISION TO AN ICE AGENT IF HE'S
3 RELEASED.

4 THEY HAVE TO MAKE A DETERMINATION, THEIR OWN
5 INDEPENDENT DETERMINATION AS TO WHETHER HE'S DANGEROUS.
6 IF HE'S CONSIDERED DANGEROUS, THEN THEY CAN HOLD HIM
7 APPARENTLY INDEFINITELY, AND THEY ACTUALLY HAVE SOME OF
8 THESE PEOPLE THEY ARE HOLDING CURRENTLY IN FLORIDA.

9 APPARENTLY THERE'S A SPLIT IN THE CIRCUITS RIGHT NOW
10 BETWEEN I BELIEVE THE FIFTH AND TENTH CIRCUIT AS TO
11 WHETHER ICE CAN HOLD PEOPLE INDEFINITELY. THAT'S NOT BEEN
12 RESOLVED YET. BUT IF HE'S RELEASED, HE WOULD BE UNDER THE
13 SUPERVISION OF ICE.

14 **THE COURT:** HOW DO YOU PRONOUNCE IT, MARIANA
15 BOAT?

16 **MS. LITTLE:** IT'S THE MARIEL BOATLIFT.

17 **THE COURT:** THAT HAPPENED IN THE LATE '80S?

18 **MS. LITTLE:** THAT'S CORRECT.

19 **MR. BAYZLE:** 1980.

20 **THE COURT:** SO 30 YEARS AGO?

21 **MS. LITTLE:** RIGHT. 1980, HE WAS SENT TO A
22 REFUGEE CAMP IN WISCONSIN INITIALLY.

23 **THE COURT:** WHAT HAVE YOU FILED WITH RESPECT TO
24 HIS 4248 CASE?

25 **MS. LITTLE:** WE FILED THE ORIGINAL MOTION TO

1 DISMISS ON JULY 19 OF THIS, 2010, AND WE INTEND TO FILE A
2 SUPPLEMENTAL MOTION ALONG THE LINES OF THE *BRONCHEAU*
3 DECISION IN HIS CASE AS WELL.

4 **THE COURT:** AND MR. BAYZLE, YOU ARE REPRESENTING
5 HIM IN THE 2241?

6 **MR. BAYZLE:** YES, YOUR HONOR. THERE'S TWO
7 PENDING MATTERS IN THE 2241. THE GOVERNMENT FILED A
8 MOTION TO DISMISS THE HABEAS PETITION ON JUNE 15, WHICH WE
9 FILED FORMAL OPPOSITION TO THAT. THE GOVERNMENT
10 SUBSEQUENTLY REQUESTED A STAY OF THAT, WHICH WE OPPOSED
11 AND THEN FILED A FORMAL OPPOSITION TO THE GOVERNMENT'S
12 MOTION TO STAY ANY PROCEEDINGS ON THE HABEAS PETITION. SO
13 THOSE ARE THE TWO PENDING MOTIONS RIGHT NOW ON THE HABEAS
14 MATTER.

15 **THE COURT:** WHAT IS YOUR CLAIM IN THE HABEAS,
16 DOES IT TRACK THE *TIMMS* OPINION?

17 **MR. BAYZLE:** YES, YOUR HONOR, IT TRACKS THE
18 *TIMMS* BASED ON A VARIETY OF REASONS FOR BOTH DUE PROCESS,
19 EQUAL PROTECTION, AND REALLY TRACKS ALL THE REASONS SET
20 OUT IN *TIMMS*.

21 YOUR HONOR, THE GOVERNMENT'S MOTION TO DISMISS IS
22 REALLY JUST BASED ON TWO ARGUMENTS. ONE, IS THAT THEY
23 ARGUE THAT IN THE LIGHT OF *COMSTOCK*, THE CONTINUED
24 COMMITMENT IS CONSTITUTIONAL. AND THEN ALSO ARGUE THAT
25 MR. FIGUEROA NEEDS TO SEEK HIS REMEDY IN THE 4248 AND NOT

1 IN THE HABEAS PETITION.

2 **THE COURT:** THEY ARE ARGUING THE LATER DEVELOPED
3 EXHAUSTION ARGUMENT, OR MAYBE IT'S NOT LATER DEVELOPED,
4 BUT THE EXHAUSTION ARGUMENT?

5 **MR. BAYZLE:** I THINK THERE ARE REMEDIES
6 AVAILABLE WITHIN 4248 --

7 **THE COURT:** THAT FORECLOSE HABEAS? WHAT DO YOU
8 THINK OF THAT? THAT WAS ONE OF THE SALIENT ISSUES THAT
9 WAS RAISED IN SEPTEMBER IN THE APPELLATE COURT DURING ORAL
10 ARGUMENT, AND THE APPELLATE COURT HAS NOT YET HANDED DOWN
11 A DECISION IN *COMSTOCK* AND *TIMMS*.

12 IN *TIMMS*, THEY WENT STRAIGHT AT WHETHER THEY OUGHT TO
13 DEFER ANY RULING UNTIL, OR AT LEAST THAT'S MY
14 UNDERSTANDING OF IT, UNTIL EXHAUSTION OCCURRED.
15 EXHAUSTION MEANING THAT YOU HAVE THE COLLATERAL PROCESS
16 INVOLVED IN 4248 AND YOU NEED TO HAVE THAT RUN ITS COURSE
17 BEFORE YOU CAN FILE A 2241.

18 SOME WOULD SAY THAT'S A FAIRLY SHOCKING APPLICATION
19 OF HABEAS CORPUS, BUT I'D LIKE TO HEAR WHAT YOU WOULD SAY
20 ABOUT IT.

21 **MR. BAYZLE:** YOUR HONOR, AS THIS COURT HELD IN
22 *TIMMS* AT THE TRIAL LEVEL, 4248 DOES NOT PROVIDE ADEQUATE
23 PROCEDURES.

24 **THE COURT:** BUT YOU CAN'T CITE THAT TO ME HERE.

25 **MR. BAYZLE:** ABSOLUTELY, YOUR HONOR. I THINK IN

1 THIS ONE, IT IS DIFFICULT TO ARGUE THAT IF 4248 IN THE
2 PROCEDURES THAT IT PROVIDES IS UNCONSTITUTIONAL AND
3 VIOLATES THE DUE PROCESS LAWS, IT'S A HARD ARGUMENT THEN
4 TO ARGUE THAT YOU HAVE TO UTILIZE THOSE INSUFFICIENT
5 PROCEDURES IN THE FIRST PLACE. I MEAN, IT HAS BEEN NINE
6 MONTHS SINCE CARLOS' RELEASE DATE AND I THINK DUE PROCESS,
7 AT A MINIMUM, REQUIRES AT LEAST AN INITIAL DETERMINATION
8 OF PROBABLE CAUSE FOR EVEN JUST CONTINUED DETAINMENT
9 FOLLOWED BY A VERY PROMPT HEARING ON THE ISSUE OF WHETHER
10 OR NOT HE WOULD BE SEXUALLY DANGEROUS UNDER THE STATUTE,
11 EVEN ASSUMING THE STATUTE ON ITS FACE WAS CONSTITUTIONAL.
12 AND THAT'S WHAT MAKES THE HABEAS PETITION NECESSARY HERE,
13 IS THAT THOSE PROCEDURES THAT ARE PURPORTEDLY PROVIDED IN
14 4248 ARE INSUFFICIENT TO PROVIDE HIM WITH THE
15 CONSTITUTIONAL PROTECTIONS.

16 **THE COURT:** WELL, BUT YOU NEED TO DEAL WITH THAT
17 BECAUSE I THINK THERE'S A VERY REAL CHANCE THAT THE
18 APPELLATE COURT IS GOING TO SAY WELL, IRRESPECTIVE OF THE
19 PROTECTIONS IN 4248, THAT'S WHAT YOU NEED TO DO AND YOU
20 CAN'T HAVE HABEAS CORPUS. THAT CUTS THE HEART OUT OF
21 HABEAS CORPUS, IT WOULD SEEM.

22 NOW, THERE ARE -- TO WHAT EXTENT DO PRISONERS IN
23 FEDERAL PRISONS WHO BRING HABEAS PETITIONS HAVE TO GO
24 THROUGH INTERNAL ADMINISTRATIVE PROCEDURES, GRIEVANCE
25 PROCEDURES, BEFORE THEY CAN MAKE VALID 2241 OR 2255

1 CLAIMS?

2 **MR. BAYZLE:** YOUR HONOR, I'M NOT AWARE OF
3 INTERNAL PROCEDURES THAT THEY MUST DO IN ORDER TO FILE A
4 HABEAS PETITION. BUT AGAIN, I WILL ADMIT THIS IS NOT
5 SOMETHING THAT I HAVE A LOT OF EXPERIENCE IN THE LAW IN
6 THAT REGARD.

7 **THE COURT:** OKAY. I THINK THAT'S AN ANALOGOUS
8 SITUATION THAT YOU MIGHT WANT TO LOOK AT BECAUSE, YOU
9 KNOW, A BIG AREA OF EXHAUSTION IN HABEAS IS TAKEN UP BY
10 THE COMITY BETWEEN FEDERAL AND STATE COURTS, BUT THAT'S
11 NOT INVOLVED HERE. TO THE EXTENT THAT GETS COMMINGLED IN
12 THE THINKING, THAT'S A MISTAKE. THERE'S NO DUAL
13 SOVEREIGNS, THERE'S NO FEDERALISM OR COMITY INVOLVED HERE
14 AT ALL. IT WOULD ONLY BE WHETHER HIERARCHICALLY AN
15 ADMINISTRATIVE PROCEDURE OR SOME OTHER SET OF RULES CAN
16 PRECLUDE YOUR RIGHT TO EXAMINE YOUR DETENTION OR CUSTODY
17 WITH HABEAS, AS I SEE IT.

18 **MR. BAYZLE:** I'LL JUST SAY, IN THIS CASE IT IS
19 THE ABILITY TO OBVIOUSLY DETAIN SOMEONE AND KEEP THEM IN
20 DETENTION FOR NOW NINE MONTHS PAST THE RELEASE DATE
21 WITHOUT ANY HEARING WHATSOEVER OR ANY INITIAL
22 DETERMINATION. IT MAKES IT VERY DIFFICULT TO CHALLENGE
23 THE CONSTITUTIONALITY OF THE STATUTE WHEN THERE ARE NO
24 HEARINGS PROVIDED AT THE ONSET TO EVEN INITIATE THOSE
25 CHALLENGE.

1 SO THAT PROCESS OF HAVING TO GO THROUGH 4248 ASSUMES
2 THAT SOMEONE HAS TO BASICALLY GIVE UP THEIR LIBERTY
3 INTERESTS FOR A GOOD LONG TIME BEFORE THEY ARE EVEN
4 ALLOWED TO HAVE ANY TYPE OF FORUM TO EVEN CHALLENGE THE
5 CONSTITUTIONALITY OF THE DETENTION.

6 **THE COURT:** I'M JUST GIVING YOU A WORD TO THE
7 WISE, THERE'S A SERIOUS CHANCE THAT THE APPELLATE COURTS
8 WILL COLLAPSE HABEAS CORPUS INTO 4248, EITHER
9 INTENTIONALLY OR UNINTENTIONALLY, IF THEY COME UP WITH AN
10 EXHAUSTION PREREQUISITE.

11 ANYWAY, DO YOU KNOW, AND YOU PROBABLY DO, WHAT THE
12 EXHAUSTION REQUIREMENTS ARE IN EITHER 2255 OR 2241,
13 PROBABLY IN 2241. IF YOU ARE IN THE BOP AND YOU MAKE A
14 CLAIM, CONDITIONS OF CONFINEMENT OR SOMETHING LIKE THAT,
15 DO YOU HAVE TO GO THROUGH AN ADMINISTRATIVE PROCESS?

16 **MR. ACKER:** I BELIEVE SO, YOUR HONOR. I THINK
17 THE COURTS HAVE, UNDER SOME CIRCUMSTANCES, EXCUSED PEOPLE
18 BASED ON THE ISSUE OF FUTILITY OR THE DETERMINATION THAT
19 IT WOULD HAVE BEEN FUTILE. BUT OTHER THAN THAT, I BELIEVE
20 IN A NORMAL CRIMINAL MATTER WHERE SOMEBODY IS CHALLENGING
21 THEIR -- IN THE CUSTODY OF THE ATTORNEY GENERAL IN A
22 CRIMINAL SENTENCE AND THEY ARE CHALLENGING CONDITIONS OF
23 CONFINEMENT, THEY NORMALLY DO HAVE TO EXHAUST THEIR
24 ADMINISTRATIVE REMEDIES PRIOR TO FILING A HABEAS.

25 **THE COURT:** THAT MAY BE A GOOD ANSWER FOR YOU.

1 I DON'T KNOW THAT IT WAS MADE TO THE APPELLATE COURT, BUT
2 THAT THE DOMAIN THAT EXHAUSTION APPLIES IS IN THE CRIMINAL
3 DOMAIN.

4 **MR. BAYZLE:** YES, SIR.

5 **THE COURT:** NOT IN THE CIVIL DOMAIN. BECAUSE NO
6 ONE HAS HERETOFORE SAID THAT 4248 PEOPLE WHO ARE IN CIVIL
7 CUSTODY, IF THEY HAVE A GRIEVANCE ABOUT THE CONDITIONS OF
8 CONFINEMENT AS SUCH, THAT THEY WOULD HAVE TO EXHAUST, HAVE
9 THEY? IF THEY DON'T LIKE THE FOOD AT MARYLAND, IF THEY
10 DON'T LIKE ONE OF THE DETAILS OF LIFE AT MARYLAND.

11 **MR. ACKER:** I DON'T BELIEVE THAT'S COME UP.

12 **THE COURT:** THEY'RE TOO FOCUSED ON GETTING OUT
13 AND NOT ON STAYING IN AND MAKING IT A BETTER PLACE, SO
14 FAR.

15 **MR. ACKER:** THAT'S GENERALLY TRUE, I BELIEVE.

16 **THE COURT:** OKAY. SO YOU ARE LOOKING FOR A
17 RULING ON YOUR 2241?

18 **MR. BAYZLE:** YES, YOUR HONOR. THERE'S THAT
19 MATTER AND THEN THE OTHER PENDING ISSUE WOULD BE THE
20 GOVERNMENT'S MOTION TO STAY, WHICH WE HAVE ALSO FILED A
21 MOTION IN OPPOSITION. MOTION TO STAY SEEMS TO BE BASED ON
22 UNTIL THE 4TH CIRCUIT RULES. IT WOULD REDUCE THE NEEDLESS
23 EXPENDITURE OF RESOURCES TO GO ON WITH A HABEAS PETITION.

24 WE OBVIOUSLY DISAGREE WITH THAT AND JUST THINK THAT
25 THAT ARGUMENT IGNORES THE FAR GREATER COST THAT

1 MR. OFARRIT HAS BEEN PAYING AND WILL CONTINUE TO PAY IN
2 DETENTION.

3 **THE COURT:** THANK YOU. YOU HAVE BRIEFED THAT?

4 **MR. ACKER:** YES, YOUR HONOR.

5 **THE COURT:** IF I DON'T STAY IT, ARE YOU
6 SATISFIED WITH YOUR BRIEFING ON THE 2241?

7 **MR. ACKER:** YES, YOUR HONOR.

8 **THE COURT:** OKAY. THANK YOU. MS. LITTLE, DO
9 YOU HAVE ANYTHING YOU WANT TO ADD?

10 **MS. LITTLE:** NO, YOUR HONOR, EXCEPT WE WILL BE
11 FILING THAT SUPPLEMENTAL MOTION NEXT WEEK.

12 **THE COURT:** OKAY.

13 **MR. ACKER:** IF THEY FILE A SUPPLEMENTAL MOTION,
14 WE WOULD LIKE THE OPPORTUNITY TO RESPOND TO THAT.

15 **THE COURT:** THIS IS A SUPPLEMENTAL MOTION TO
16 JOIN IN THE *BRANCHEAU* CASES?

17 **MS. LITTLE:** THAT'S CORRECT.

18 **MR. ACKER:** AND WE'LL DO THAT QUICKLY.

19 **THE COURT:** ALL RIGHT. WE'LL GIVE YOU FIVE DAYS
20 AND FIVE DAYS TO DO THAT. IT'S NOT VERY INVOLVED, YOU
21 JUST HAVE TO PARROT WHAT WAS IN THE OTHER CASES.

22 **MS. LITTLE:** RIGHT.

23 **MR. ACKER:** THE ONLY THING I WOULD SAY, YOUR
24 HONOR, IS THAT I THINK THE RULES ARE TRYING TO GO TO
25 CALENDAR DAYS INSTEAD OF BUSINESS DAYS. I REQUEST IT BE

1 SEVEN CALENDAR DAYS RATHER THAN FIVE BUSINESS DAYS.

2 **THE COURT:** I'LL DO THAT, SEVEN CALENDAR DAYS.

3 **MR. ACKER:** THANK YOU.

4 **THE COURT:** THANK YOU FOR APPEARING AND FOR
5 REPRESENTING HIM.

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20 END OF TRANSCRIPT
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1 CERTIFICATE

2 THIS IS TO CERTIFY THAT THE FOREGOING TRANSCRIPT OF
3 PROCEEDINGS TAKEN AT THE CIVIL SESSION OF UNITED STATES
4 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF THE
5 PROCEEDINGS TAKEN BY ME IN MACHINE SHORTHAND AND
6 TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

7 THIS THE 15TH DAY OF JANUARY, 2011.

8
9 /S/ DONNA J. TOMAWSKI

10 DONNA J. TOMAWSKI
11 OFFICIAL COURT REPORTER
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